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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,949	05/16/2005	George Mauro	NATAPE P16BUSP2	1714
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EXAMINER				
ALIE, GHASSEM				
ART UNIT		PAPER NUMBER		
3724				
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03/17/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/534,949

Applicant(s)

MAURO, GEORGE

Examiner

GHASSEM ALIE

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-19 and 23-36 is/are pending in the application.
- 4a) Of the above claim(s) 17-19, 24-27, 30-33, 35 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16, 23, 28, 29 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-848)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Election/Restrictions

1. Applicant's election of Group V (claims 28 and 34) in the reply filed on 12/18/08 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 17-19, 24-27, and 30-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected inventions, there being no allowable generic or linking claim.

In addition, new claims 35 and 36 are withdrawn from consideration, since claims 35-36 include the subject matter of the non-elected Group II (claims 25 and 30). It should be noted that claims 25 and 30 call for a fruit coping device having at least one blade with a rectangular shape, as recited in item 2 of the restriction requirement mailed on 11/20/08. Similarly, new claims 35 and 36 also recite "at least one of the first and the second blades has a triangular shape.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

a person shall be entitled to a patent unless –
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 16, 23, 28, 29 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Winquest (1,674,271). Regarding claims 16, 23, and 29, Winquest teaches a fruit coring device 1 including a handle 13, a tubular member 10 having first and second opposed ends

defining a longitudinal axis, the tubular member having an interior cavity, the handle being connected adjacent the first end of the tubular member and the second end defining a member cutting edge. It should be noted that the cutting edge is defined by the cutting edge portion of the blades 28 that is in the same plane with the cutting edge of the blades 29. Winquest also teaches at least one cutting blade 29 having a cutting edge, and at least one blade being supported within the interior of the cavity of the tubular member, by only an inwardly facing surface of the tubular member such that an opposed end of the at least one blade extends toward the longitudinal axis but remains free and unsupported within the interior cavity, and the blade cutting edge lies substantially in a plane defined by the member cutting edge. Winquest also teaches that the at least blade 29 is formed by a cut formed on a sidewall of the tubular member and the sidewall is bent inward into the interior cavity of the tubular member to form the at least one blade such that an opposite end of the at least one blade 29 extends at least half way toward the longitudinal axis but remains free and unsupported within the interior cavity. It should be noted that the location of the longitudinal axis is not defined. Therefore, an axis which is near the two blades is considered to be the longitudinal axis. See Figs. 1-6 in Winquest.

Regarding claims 28 and 34, Winquest teaches everything noted above including a substantially radially inwardly facing free end of each of the first and second blades is spaced from longitudinal axis.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 16, 23, 28, 29 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over McClean in view of Rink (3,127,939) or James (6,904,686) or Rosenbloom (Des. 130,116). Regarding claims 16, 23, and 29, McClean teaches a fruit coring device including a handle, a tubular member having first and second ends defining a longitudinal axis, the tubular member having an interior cavity, the handle being connected adjacent the first end of the tubular member and the second end defining a member cutting edge. It should be noted that the top portion of the tubular portion that is laterally extending towards the longitudinal axis of the tubular member is considered to be a handle. McClean also teaches at least one blade having a cutting edge, and at least one blade being supported within the interior of the cavity of the tubular member, by an inwardly facing surface of the tubular member such that an opposite end of the at least one blade extends toward the longitudinal axis but remains unsupported within the interior cavity, and the blade cutting edge lies substantially in a plane defined by the member cutting edge. It should also be noted that McClean also teach that the blade extends at least half way toward the longitudinal axis. It should be noted that the location of the longitudinal axis is not defined. Therefore, an axis which is near one of the blades is considered to be the longitudinal axis. See Figs. 1-4 in McClean.

McClean does not specifically teach that the blade is only supported by the inwardly facing surface of the tubular member, and the blade is formed by a cut formed in a sidewall of the tubular member and the cut sidewall is bent inward into the interior cavity of

the tubular member. However, it is well known in the art to form blades by bending part of a base inwardly such as taught by Rink, James, and Rosenbloom. Rink teaches a blade 14 which is only supported by the inwardly facing surface of a tubular member 11, and the blade is formed by a cut formed in a sidewall of the tubular member and the cut sidewall is bent inward into the interior cavity of the tubular member. See Figs. 1-4 in Rink. James also teaches a blade 40 which is only supported by the inwardly facing surface of a tubular member, and the blade is formed by a cut formed in a sidewall of the tubular member and the cut sidewall is bent inward into the interior cavity of the tubular member. See Figs. 1-3 in James. Rosenbloom also teaches blade that is only supported by the inwardly facing surface of a tubular member, and the blade is formed by a cut formed in a sidewall of the tubular member and the cut sidewall is bent inward into the interior cavity of the tubular member. See Figs. 1-3 in James. It should also be noted that the James and Rosenbloom also teach that the blade extends at least half way toward the longitudinal axis that pass through the center of the tubular member. It would have been obvious to a person of ordinary skill in the art to form the blades of McClean's cutting apparatus, by cuts formed in a sidewall of the tubular member in a manner that the blades are only supported by the inwardly facing surface of the tubular member, as taught by, Rink, James, or Rosenbloom, in order to form the blades in an alternative way that reduces the manufacturing cost of the apparatus and produces the same result.

Regarding claims 28 and 34, McClean, as modified above, teaches everything noted above including a substantially radially inwardly facing free end of each of the first and second blades is spaced from longitudinal axis.

Response to Amendment

7. Applicant's argument with respect to claims 16, 23, 28, 29 and 34 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lake (1,485,681) and Krilow (2,188,362) teach a fruit coring device.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ghassem Alie/
Primary Examiner, Art Unit 3724

March 13, 2009